

REMARKS

Claims 1-8 are pending in this application. Claims 1-2 and 4-7 are amended. No new matter is being added.

The Examiner indicated that the IDS filed by Applicant on October 21, 2004 was being placed in the file but not considered by the Examiner because the IDS did not include a listing of the references in proper format. Enclosed with this Amendment is a modified Form SB/08 listing the non-confidential references filed on October 21, 2004. A Form SB/08 listing the references filed under the provisions of MPEP § 724 will be submitted to the Office under separate cover.

The Examiner rejected claims 1-8 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, and also rejected claims 1-8 under 35 U.S.C. 112, second paragraph, as being indefinite.

As noted in Applicant's Amendment C, this application is a continuation of U.S. Patent No. 6,183,362 (the '362 patent), which is a continuation of U.S. Patent No. 5,761,647 (the '647 patent). Both the '362 and the '647 patents were, at the time of Amendment C, the subject of litigation before the United States Court of Appeals for the Federal Circuit (case 05-1144; -1145). Appeal was taken from a judgment of the United States District Court for the District of Nevada in which the lower court found that "to the extent that the Plaintiffs' patents-in-suit contain the limitation of theoretical win profile, they are invalid due to indefiniteness." The court also found that "the term theoretical win profile is indefinite," and "[a]ccordingly, the written description is inadequate as a matter of law."

On November 15, 2005, the Federal Circuit affirmed the District Court without issuing a separate written opinion. *Harrah's Entm't, Inc. v. Station Casinos, Inc.*, 154 Fed. Appx. 928 (Fed. Cir. 2005).

In view of the Federal Circuit's affirmance, Applicant is herein amending each of the pending claims to remove the term "theoretical win profile".

Accordingly, the rejection of claims 1-8 under 35 U.S.C. 112 should now be withdrawn. The Examiner is invited to contact the undersigned attorney by telephone to discuss any outstanding matters requiring attention prior to allowance.

Respectfully submitted,
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